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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3223 OF 2003
IN
SUIT NO.1233 OF 1992

Shantilal P. Makwana)..Plaintiff

Versus

Andikad V. Davis and others)..Defendants

And

Ganesh Electricals)..Respondent

Mr.N.B. Jagad for the Plaintiff.

Mr.Rajiv Mane, Assistant Government Pleader, for Defendant No.3.

None present for Defendant Nos.1 and 2 and the Respondent.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 13TH APRIL 2006

P.C.:

. The present Motion has been taken out for appointing the Court Receiver in respect of the suit premises being Shop No.7, Shiv Bhim Nagar, Dattapada Road, Opposite Special Steel Ltd., Borivali (East), Mumbai 400 066. The Suit has been filed on title. Notice of Motion No.1076 of 1992 was taken out by the Plaintiff seeking appointment of the Court Receiver. The Plaintiff had also filed a Suit in the City Civil

Court being Suit No.6626 of 1990 which was dismissed on 17th August 1993. Civil Revision Application No.751 of 1993 was preferred by the Plaintiff and the Receiver is appointed by this Court. When the Motion came up for hearing, the Receiver was already appointed. The Plaintiff was appointed as the agent of the Court Receiver. In view of these circumstances, this Court dismissed the Motion. It appears that the Suit of the Plaintiff came to be dismissed and a Notice of Motion was filed for restoration of the Suit that was dismissed. An Appeal was preferred by the Plaintiff against this Order. The Appeal Court on 13th February 2003 heard the Appeal and by way of sheer indulgence granted prayer clause (a) of the Motion which sought restoration of the Suit. This order was passed because the learned Counsel for the Plaintiff was unwell when the Suit was dismissed. The Appeal Court then considered prayer clause (b) of the Motion which was for appointment of the Court Receiver. The Appeal Court vide paragraphs 9 and 10 of the order observed thus :

> "9. We have heard Mr.Jagad on prayer (b) of the motion also. Inasmuch as the Receiver was sought nearly after 7 years, no court would have granted it and therefore as far as prayer (b) of the motion is concerned, we reject the

same.

10. We are not observing anything on the merits of the claims by the rival parties. This would be for the court to go into as and when the suit is heard and decided."

2. In my opinion, therefore, it would be inappropriate to grant any reliefs in this Motion once the Appeal Court has observed that appointment of the Court Receiver after seven years cannot be granted and have rejected the prayer for appointment of the Court Receiver. Undoubtedly, more time has elapsed now and, therefore, it would not be proper to appoint a Receiver at this stage.

3. In such circumstances, Notice of Motion dismissed. No order as to costs.